

FMA Guidelines 2018/19 – Licence as a bank or an investment firm

Granting of a licence to operate a bank or an investment firm in accordance with the Liechtenstein Law of 21 October 1992 on Banks and Investment Firms (*Gesetz vom 21. Oktober 1992 über die Banken und Wertpapierfirmen; Bankengesetz, BankG* – Banking Act; hereinafter referred to as the “BA”) and the Liechtenstein Ordinance of 22 February 1994 on Banks and Investment Firms (*Verordnung vom 22. Februar 1994 über die Banken und Wertpapierfirmen; Bankenverordnung, BankV* – Banking Ordinance; hereinafter referred to as the “BO”)

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1. General information

Undertakings intending to conduct banking business in accordance with Article 3(3) BA or provide investment services in accordance with Article 3(2) BA on a professional basis must hold a licence issued by the FMA prior to commencing their business activities (Article 15(1) BA).

The licence to operate a bank or an investment firm will only be granted if all the conditions set out in Articles 18 to 24 BA (including with respect to legal form, registered office, guarantees in respect of proper conduct of business, articles of association, organisational structure, and initial and minimum capital) are met.

1.1. Legal form

Banks and investment firms may only be established in the legal form of a company limited by shares (*Aktiengesellschaft, AG*) or a European Company (SE). In duly substantiated cases, the FMA may permit exemptions (Article 18(1) BA).

1.2. Foreign group

If the bank or investment firm is part of a foreign group that operates in the financial sector, the licence will only be granted if (in addition to the conditions set out in Articles 18 to 24 BA) the group is subject to consolidated supervision that is comparable to that in Liechtenstein and the supervisory authority of the home country of the foreign group does not object to the establishment of a subsidiary (Article 15(2) BA).

1.3. Company name

In accordance with Article 16(1) BA, undertakings may only use words or expressions indicating activities as a bank or an investment firm in the company name, in any descriptions of the purposes of the business and in business advertising if they have been granted a licence to operate as a bank or an investment firm. Banks and investment firms headquartered abroad are permitted to use their company name in Liechtenstein. If there is a risk of this causing confusion, however, an explanatory name affix may be required. In cases in which the name of the parent company is used, the provisions

stipulated under Article 16(3) BA must be observed. The FMA will verify that the company name is acceptable from a regulatory perspective.

1.4. Head office

The registered office and the head office of a bank or an investment firm must be situated in Liechtenstein (Article 18(2) BA).

1.5. Initial and minimum capital

The initial capital must be fully paid up prior to commencing business operations. The initial capital for banks must be no less than CHF 10 million, or the equivalent in euros or US dollars, and for investment firms no less than CHF 730,000.00, or the equivalent in euros or US dollars. The business plan needs to indicate whether the minimum initial capital requirement, factoring in start-up costs, has been met. It is essential to note that, where the circumstances so warrant, the FMA may require a different level of initial capital commensurate with the nature and scale of operations (Article 24 BA).

In accordance with Article 93 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 646/2012 (Capital Requirements Regulation; hereinafter referred to as the “CRR”), the own funds of an institution may not fall below the amount of initial capital required at the time of its authorisation. Following commencement of operations, the minimum capital for banks must therefore not fall below CHF 10 million, or the equivalent in euros or US dollars, and for investment firms it must not fall below CHF 730,000.00, or the equivalent in euros or US dollars (Article 24(1) and (2) BA).

Notwithstanding Article 24(1) BA, the initial capital for investment firms with administration rights¹ (see Article 30v BA) must be no less than CHF 120,000.00, or the equivalent in euros or US dollars (Article 30v BA).

2. Qualifying holdings

Shareholders with qualifying holdings within the meaning of Article 4(1)(36) CRR must satisfy the applicable eligibility requirements in view of the requirement to ensure sound and prudent management of the bank or investment firm (Article 17(5) BA).

Reference is made to the [FMA Guidelines 2017/20](#) with respect to the requirements placed on persons with qualifying holdings and the documents to be submitted by them.

¹ Investment firms with administration rights must exclusively provide investment services in accordance with Annex 2(A)(1)(1), (2), (4) and (5) BA. Their activities are therefore limited to the management of funds and securities on behalf of clients, the acceptance and transmission of orders, the execution of orders, portfolio management and the provision of investment advisory services (see Reports and Applications 2014/67, 80 – BuA 2014/67, 80).

3. Guarantee in respect of the proper conduct of business

3.1. Assessment of guarantees

For the assessment of guarantees in respect of the proper conduct of business, reference is made to [FMA Communication 2013/07](#).

The persons entrusted with the administration and management of a bank or an investment firm must meet the professional and personal requirements to ensure the proper conduct of business at all times (Article 19 BA; see FMA Communication 2013/07). According to Article 29(1) BO, in particular, the persons intended to serve

- on the Board of Directors,
- as the Head of Internal Audit,
- on the Risk Committee and
- on the Executive Board

must be appropriately qualified for the intended position on the basis of their education and career history. This also applies to other key function holders (see FMA Communication 2013/07).

When assessing the requirements, the FMA takes into account, for example, the factual and geographical scope of business and the organisational structure of the bank or investment firm. The intended persons must also be in a position to duly perform their tasks at the bank or investment firm when one takes into account their other duties and their place of residence.

3.2. Mandate ceilings, incompatibility and close relationships

When appointing members of the Board of Directors and Executive Board, the mandate ceilings for members of governing bodies as defined under Article 29a BO must also be observed.

The persons entrusted with the administration and management of a bank or an investment firm must not belong to the FMA, the FMA Complaints Commission or their governing bodies, and no other close relationships between the bank or investment firm and other individuals or legal entities may exist that may hinder supervision (see Article 20(1) and (2) BA). There may also be no further obstacles in this sense in accordance with Article 20(3) BA.

4. Organisational structure

4.1. General organisational structure requirements

Under Article 22(1) BA, banks and investment firms must be organised appropriately according to their field of business and require

- a Board of Directors comprising at least three members for the overall management, supervision and control of the bank or investment firm (see Article 33 BO);
- an Executive Board responsible for operations which must be composed of not less than two members with joint responsibility for performing the relevant functions; the members may not concurrently serve on the Board of Directors;
- an Internal Audit department that reports directly to the Board of Directors (see Article 33 BO with respect to the transfer of internal auditing duties);
- a permanent, effective and independently working Compliance function which supports and monitors the persons responsible for the provision of services with respect to adherence to the applicable statutory and regulatory provisions (Article 34a BO);

- a Risk Management function that works independently of the operating business (Article 7a BA in conjunction with Article 21c et seqq. BO); and
- suitable procedures via which employees can report breaches against the BA and the CRR.

Where appropriate according to the nature, scale and complexity of the business activities, the FMA may require that a bank or an investment firm establishes an independent Risk Management function (Article 21d BO). Furthermore, banks or investment firms that are deemed to be of considerable importance due to their size, internal organisational structure and the nature, scale and complexity of their business activities are required to establish a Risk Committee (Article 21e BO).

4.2. Board of Directors and Executive Board

The division of duties between the Board of Directors (supervisory body) and the Executive Board must ensure the proper monitoring of the Executive Board (management body) (Article 22(4) BA). When selecting the members of the Board of Directors and the Executive Board, the topic of diversity must be borne in mind (Article 22(8) BA).

The Board of Directors is responsible for the overall management, supervision and control of the bank or investment firm. In particular, the Board of Directors' non-transferable duties under Article 23(2) BA and Article 31b BO comprise:

- The definition of the organisational structure and the adoption of regulations for corporate governance and control and for the management of the risk strategy, in particular by ensuring a separation of duties within the organisational structure and measures for the prevention of conflicts of interest as well as by ensuring their regular review and adjustment; the Board of Directors is accountable to the FMA with respect to the definition of these rules of procedure and the monitoring of their implementation, and must provide it with appropriate evidence on request
- The determination of accounting, financial control and financial planning principles, if this is necessitated by the nature and scale of operations
- The appointment and dismissal of the persons entrusted with managing and representing the company
- The supervision of the persons entrusted with the management of the company, including with respect to compliance with legal provisions, the articles of association and regulations as well as the business development of the company
- The drawing-up of the annual report and approval of the interim financial statements as well as the preparation of the general meeting and the implementation of its resolutions
- The monitoring of disclosure and communication activities
- The regular monitoring and review of the suitability and implementation of the strategic objectives of the bank or investment firm during the provision of investment services and ancillary services and the performance of investment activities, the effectiveness of the rules of procedure of the bank or investment firm and the appropriateness of the corporate policy as regards the provision of services to clients and the setting of the required measures to eliminate any shortcomings

Banks and investment firms must also continuously comply with the general organisational requirements stipulated in Article 31a BO.

In accordance with Article 31b(3) BO, it must be ensured at all times that members of the Board of Directors have adequate access to the information and documents required for the supervision and monitoring of the decision-making processes of the Executive Board.

4.3. Committees

If the Board of Directors comprises five or more members, it may delegate the duties that are not expressly reserved for it by law to a committee set up from amongst its ranks and made up of at least three members.

4.4. Additional requirements for banks and investment firms of considerable importance

A bank or an investment firm that is deemed to be of considerable importance due to its size, internal organisational structure and the nature, scale and complexity of its business activities is required to establish a Risk Committee, a Nomination Committee and an Audit Committee of the Board of Directors in accordance with Article 22(2a) BA.

4.5. Articles of association and regulations

The articles of association and regulations must provide a precise description of the bank's or investment firm's factual and geographical scope of business. Other activities that fall outside the scope of banking business or investment services must be expressly mentioned in the articles of association. To be deemed valid, the articles of association must be approved by the FMA (Article 21 BA).

Articles of association

In accordance with Article 31(1) BO, the provisions of Article 279 of the Liechtenstein Persons and Companies Act of 20 January 1926 (*Liechtensteinisches Personen- und Gesellschaftsrecht vom 20. Januar 1926, PGR*) apply to the content of the articles of association (legally required content of articles of association). In particular, they must include a clear description of the factual and geographical business areas in which the activities of the bank or investment firm are regularly conducted.

Regulations

The rules of procedure define the organisational structure as well as the business principles and the financial management of the bank or investment firm (Article 31(2) BO). In particular, they include the duties and authorities of the Board of Directors, the Executive Board, the Compliance function and Internal Audit as well as authority rules and provisions on risk management in accordance with Article 21c BO and provisions on transactions with governing bodies and employees in accordance with Article 21a BO (Article 31(2) BO).

The rules of procedure must also guarantee that the Board of Directors ensures the following (Article 31(3) BO):

- The definition, acceptance and monitoring of the business organisation with a view to the provision of investment services, ancillary services and investment activities, taking account of all requirements to be complied with by the bank or investment firm; the requirements placed on the business organisation depend on the nature, scale and complexity of the business activities of the bank or investment firm; in particular, the skills, knowledge and experience required from the bank or investment firm's personnel as well as the resources, processes and regulations for the provision of services and the performance of investment activities by the bank or investment firm must be taken into account
- The definition, acceptance and monitoring of a corporate policy with respect to the offered and provided or delivered services, investment activities, products and transactions in accordance with the risk tolerance of the bank or investment firm, and the special features and requirements of the clients to whom the foregoing are offered and provided or delivered, where applicable including the performance of appropriate stress tests
- The definition, acceptance and monitoring of a remuneration policy for persons involved in the provision of services for clients that aims to ensure responsible corporate management, the fair treatment of clients and the avoidance of conflicts of interest in relation to clients

4.6. Recording of communication

Under Article 31c BO, the bank or investment firm must ensure that the required recordings are kept for all of its services, activities and transactions. Recordings are required that allow the FMA to ensure that the bank or investment firm has met all of its obligations, including those with respect to its clients or potential clients and with a view to the integrity of the market.

4.7. Outsourcing of data processing

The outsourcing of data processing abroad is only permitted if the conditions set out under Article 14a BA in conjunction with Article 27e BO are met. Reference is made to the [CEBS Guidelines on Outsourcing 2006](#) of the European Banking Authority (EBA).²

5. Licence application and licensing procedure

5.1. Licence application

As a general principle, licence applications and the accompanying documents must be submitted in German. The FMA may permit exceptions to this rule.

The application to be submitted, including all the requisite documents that follow the structure outlined below (especially in accordance with Article 28 BO), must be sent to the FMA. Applicants should refer to supporting documents (enclosures). Applications for a licence are to be submitted to the FMA in hard copy and electronic format.

5.2. Informal preliminary application

Prior to submitting the application in accordance with Article 17(1a) BA, a draft version of the definitive licence application (application for preliminary review) can be submitted to the FMA without the original documents.

The application for preliminary review must have the same fundamental structure and contain the same information and documents as the definitive licence application. Here, it is important to comment on each issue with reference to any relevant documents appended.

It should be noted that only key sub-aspects are checked for red flags as part of the informal preliminary review. These checks cover the following topics:

- Qualifying holdings (taking account of the entire group) and qualifying beneficial owners (direct/indirect (attributable))
To be submitted: passport copy and company register excerpts at all levels of the group organisational chart
- Origin of funds
To be submitted: a description of the origin of the funds that are to be used for the establishment of the company (including the statutory capital)
- Business plan
To be submitted: a draft of the business model as well as the budget plan for the first three years
- Complete group structure with details of relationships (share capital and voting rights)

² The CEBS Guidelines on Outsourcing 2006 are currently being revised by the EBA. See <https://www.eba.europa.eu/regulation-and-policy/internal-governance/guidelines-on-outsourcing-arrangements>.

To be submitted: a group organisational chart (all group companies including ultimate beneficial owners)

Please note that the FMA's preliminary review does not constitute a definitive and conclusive review, especially as only the aforementioned framework information is incorporated here.

5.3. Licensing procedure

During the licensing procedure, the FMA undertakes a thorough legal and financial assessment of the applicant's circumstances.

The checklists made available in the Annex of these Guidelines must be used. It is important to comment on each issue with reference to any relevant documents enclosed. A separate list of any enclosed documents must be provided, arranged in numerical order. The documents submitted will be checked carefully to ensure that the formal and substantive requirements are met. The FMA will inform the applicant of any matters that are unclear and need to be corrected.

The applicant should submit the definitive licence application, including all the documents referred to in section 5.4 of these Guidelines, by writing to the Liechtenstein Financial Market Authority (FMA), Banks Division, Legal Department, Landstrasse 109, P.O. Box 279, 9490 Vaduz, Liechtenstein (Article 17 of the BA).

Following receipt of the application, the FMA will send the applicant confirmation of receipt containing details of the FMA contact point.

If there are any changes in material facts during the licensing procedure, the relevant documents must be updated and adjusted in line with the new legal situation and submitted immediately.

All information provided by applicants will be treated as confidential and subject to professional confidentiality in accordance with Article 31a BA.

A fee will be charged in respect of the licensing procedure, as indicated in section 6 of these Guidelines.

The duration of the licensing procedure will depend primarily on the coherence and completeness of the information and the documents provided in the application.

All rejections must be communicated to applicants within six months of receipt of the application or, if the application is incomplete, within six months of the provision of the required details. In all circumstances, a decision must be made within 12 months of receipt of the application (Article 17(3) BA).

5.4. Application documents for the granting of a licence as a bank or an investment firm

The application documents for the granting of a licence as a bank or an investment firm in accordance with Article 28(1) BO and Annex 1.1(28) BO include, in particular:

- All general information on the applicant
- Information on initial and minimum capital
- Documents about the origin and basic ownership structure of the share capital as well as the form of its payment
- The identity and assessment of suitability of persons with a qualifying holding in the applicant
- Reason for the application
- Draft articles of association in accordance with Article 31 BO
- Draft rules of procedure in accordance with Article 31(2) BO
- A description of the organisation (including its outsourcing and related data security and data processing, risk management and the internal control system, including sound management and

accounting practices, as well as the associated regulations and internal directives and the implementation of the requirements set out under due diligence legislation, in particular the Liechtenstein Law of 11 December 2008 on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist Financing (*Gesetz vom 11. Dezember 2008 über berufliche Sorgfaltspflichten zur Bekämpfung von Geldwäsche, organisierter Kriminalität und Terrorismusfinanzierung, SPG – Due Diligence Act, DDA*); including a description of the IT solution and evidence that the requirements stated under Article 27e BO are met as well as the regulations and processes for ensuring compliance with the provisions of Directive 2014/65/EU (MiFID II) and the bank's or investment firm's personnel budget

- The personnel composition of the Board of Directors and Executive Board
- Evidence that the proper conduct of business by the members of the Board of Directors, Executive Board and Head of Internal Audit (as well as other holders of key positions) is ensured in accordance with Articles 29 and 30 BO (see FMA Communication 2013/07)
- Financial information, including a budget for the first three years
- A declaration from an FMA-recognised firm of auditors that it accepts the mandate of external auditor (declaration of acceptance by the firm of auditors, mandate head and lead auditor)

Other application documents comprise:

- Job descriptions/requirements profiles
- An unqualified and positive opinion of a firm of auditors as stipulated under banking legislation with respect to the organisational structure (including IT and the internal control system), the articles of association (possibly as a draft) and the regulations (possibly as a draft)
- Participation agreement with a deposit insurance and investor protection scheme
- Marketing concept

The FMA may, where applicable, request further documentation.

Once all of the named information and documents are available and have been found to be in order by the FMA, the FMA will issue a corresponding licence.

The bank or investment firm must commence its business activities within one year of the decision being taken to grant a licence, otherwise the licence will expire *ex lege* (see Article 27(1)(a) BA).

6. Charges

6.1. Licensing fee

The fee for the granting of the licence is CHF 100,000.00 for a bank and CHF 30,000.00 for an investment firm (Article 30 in conjunction with Annex 1(A)(1)(a) and (b) of the Liechtenstein Financial Market Supervision Act (*Finanzmarktaufsichtsgesetz, FMAG*; hereinafter referred to as the "FMA Act").

6.2. Taxes

General information on the taxation of banks and investment firms may be obtained from the Liechtenstein Tax Administration (www.stv.llv.li).

6.3. Commercial Register registration fee

The fees chargeable for registration in the Commercial Register and public certification will be as set forth in the Liechtenstein Land and Commercial Register Fees Ordinance (*Verordnung über die Grundbuch- und Handelsregistergebühren*).

7. Expiration, withdrawal and revocation of licences

The rules governing the expiration, withdrawal and revocation of licences are set out in Articles 27 to 28 BA.

8. Data protection

The FMA processes personal data exclusively in accordance with the general data processing principles of the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC) and in line with applicable data protection law.

Information regarding the processing of personal data, including details about the purpose of processing, the data controller and the rights of data subjects can be found in the FMA Privacy Policy: <https://www.fma-li.li/de/fma/datenschutz/fma-information-zum-datenschutz.html>

Annex 1 – Legal basis

Annex 2 – Licence checklist for banks

Annex 3 – Licence checklist for investment firms

Annex 4 – Licence checklist for investment firms with administration rights

Annex 5 – Checklist for provision of MTF investment service

Annex 6 – Checklist for licensing of an investment firm intended to provide the investment service “Operation of an OTF”

Annex 1 – Legal basis

- Liechtenstein Law of 21 October 1992 on Banks and Investment Firms (*Gesetz vom 21. Oktober 1992 über die Banken und Wertpapierfirmen; Bankengesetz, BankG – Banking Act, BA*)
- Liechtenstein Ordinance of 22 February 1994 on Banks and Investment Firms (*Verordnung vom 22. Februar 1994 über die Banken und Wertpapierfirmen; Bankenverordnung, BankV – Banking Ordinance, BO*)
- Liechtenstein Persons and Companies Act of 20 January 1926 (*Liechtensteinisches Personen- und Gesellschaftsrecht vom 20. Januar 1926, PGR*)
- Liechtenstein Law of 11 December 2008 on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist Financing (*Gesetz vom 11. Dezember 2008 über berufliche Sorgfaltspflichten zur Bekämpfung von Geldwäscherei, organisierter Kriminalität und Terrorismusfinanzierung, SPG – Due Diligence Act, DDA*)
- Liechtenstein Ordinance of 17 February 2009 on Professional Due Diligence to Combat Money Laundering, Organized Crime, and Terrorist Financing (*Verordnung vom 17. Februar 2009 über berufliche Sorgfaltspflichten zur Bekämpfung von Geldwäscherei, organisierter Kriminalität und Terrorismusfinanzierung, SPV – Due Diligence Ordinance, DDO*)
- FMA Communication 2013/07 – Guarantee in respect of the proper conduct of business (*FMA-Mitteilung 2013/07 – Gewähr für einwandfreie Geschäftstätigkeit*)
- FMA Guidelines 2017/20 – Prudential assessment of qualifying holdings (*FMA-Wegleitung 2017/20 – Aufsichtsrechtliche Beurteilung von qualifizierten Beteiligungen*)
- FMA Guidelines 2017/11 – Debt requirements under the CRR/CRD IV (*FMA-Wegleitung 2017/11 – Anforderungen bezüglich Verschuldung gemäss CRR/CRD IV*)
- FMA Guidelines 2017/10 – Obligations regarding equity capital and capital requirements under the CRR/BA/BO (*FMA-Wegleitung 2017/10 – Pflichten in Bezug auf die Eigenmittel und Eigenmittelanforderungen gemäss CRR/BankG/BankV*)
- FMA Guidelines 2017/9 – Disclosure requirements under the CRR/BA/BO (*FMA-Wegleitung 2017/9 – Offenlegungsanforderungen gemäss CRR/BankG/BankV*)
- FMA Guidelines 2017/8 – Remuneration requirements under the CRR/BA/BO (*FMA-Wegleitung 2017/8 – Anforderungen an die Vergütung gemäss CRR/BankG/BankV*)
- FMA Guidelines 2017/7 – Liquidity requirements under the CRR/CRD IV (*FMA-Wegleitung 2017/7 – Liquiditätsanforderungen gemäss CRR/CRD IV*)
- FMA Guidelines 2017/6 – Preparation of restructuring plans (*FMA-Wegleitung 2017/6 – Erstellung von Sanierungsplänen*)
- FMA Guidelines – Disclosure obligations under the BA (*FMA-Wegleitung – Offenlegungspflichten nach BankG*)
- Reporting: <https://www.fma-li.li/de/finanzintermediare/bereich-banken/banken-und-wertpapierfirmen/meldewesen/meldekalendar.html>

Annex 2 – Licence checklist for banks



Annex 3 – Licence checklist for investment firms



Annex 4 – Licence checklist for investment firms with administration rights



Annex 5 – Checklist for provision of MTF investment service



Annex 6 – Checklist for licensing of an investment firm intended to provide the investment service “Operation of an OTF”

